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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 05 065 50033

Office: TEXAS SERVICE CENTER Date: NOV 28 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a wireless research and development company. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, the petition was accompanied by certification from the Department of Labor. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess the equivalent of an advanced degree as he did not hold a "United States baccalaureate degree or a foreign equivalent degree."

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). Regarding the "equivalent" of an advanced degree, the regulations state: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The record contains the Form ETA 750B signed by the beneficiary under penalty of perjury. According to this form, the beneficiary received a Bachelor of Science Degree from Gauhati University after three years of study in 1979 and received a second Bachelor of Science Degree from the University of Calcutta after three years of study in 1982. The petitioner submitted the beneficiary's transcripts for both degrees. The 1979 transcript from Gauhati University indicates that it reflects the beneficiary's marks from a "B. Sc. (Two Year Degree) Examination." The transcripts from the University of Calcutta contain the following headings: "B. Tech. Part I Examination" relating to 1980 (examination held in July 1981), "B. Tech. Part II Examination" for 1981 (examination held in June 1982) and B. Tech. Part III Examination for 1982. The original petition was accompanied by two credentials evaluations from Cultural House, Inc, one dated 1997 and the other dated 1998. The 1997 evaluation recognizes the Gauhati University as a two-year degree, equivalent to an Associate's degree in the United States, while the 1998 evaluation characterizes it as a three-year degree. The 1997 evaluation finds the beneficiary's degree from the University of Calcutta equivalent to a Bachelor of Science Degree from an accredited college or university in the United States. In the final paragraph, however, the evaluation acknowledges that the beneficiary only has five years total of university coursework, implying that the beneficiary could only have spent three years at the University of Calcutta since he spent two years at Gauhati University. The 1998 evaluation concludes that the "program of study" at the University of Calcutta is "equivalent to the Degree, Bachelor of Science in Electronics Technology." The evaluation concludes, however, as follows:

It is the judgment of the undersigned that [the beneficiary] has, as a result of his formal education and practical experience (3 years of experience = 1 year of university course work) the equivalent of the degree, Bachelor of Science, from a regionally accredited college or university in the United States. This evaluation is based on formal education and practical experience.

The director concluded that although the beneficiary had the required five years of experience applicable toward an advanced degree equivalency, he does not have the required baccalaureate degree or its foreign equivalent degree.

On appeal, counsel asserts that the beneficiary possesses a foreign degree equivalent to a United States baccalaureate degree. In support of the appeal, the petitioner submits a new evaluation of the beneficiary's foreign degree. Counsel also asserts that the director erred in failing to issue a request for additional evidence (RFE) prior to issuing a notice of denial. The petitioner submits a February 16, 2005 memorandum by

In the memorandum submitted by the petitioner, [REDACTED] asserts that the director may deny an application or petition where there is clear evidence of ineligibility. The record contained the beneficiary's degrees and transcripts reflecting that the beneficiary's degrees only required two or three years of coursework each. As the lack of a bachelor's degree or a foreign equivalent degree precludes eligibility, the director did not err in failing to issue an RFE. Regardless, even if the director had erred, the most expedient remedy would be to consider any evidence that might have been submitted in response to such a request on appeal. We will consider the new evaluation submitted below.

The new evaluation, from Morningside Evaluations and Consulting, states:

Graduation from high school and competitive entrance examination scores are requirements for admission and enrollment at the University of Calcutta, an accredited institution of higher learning in India. After enrolling and completing *four years* of academic coursework and examinations at the University, [the beneficiary] was awarded a Bachelor of Technology degree in 1982.

(Emphasis in original.) The evaluation then concludes that the degree from the University of Calcutta is equivalent to a bachelor's degree from an accredited institution of higher education in the United States.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In this matter, the evaluations are inconsistent with the record. The beneficiary only claims to have attended the University of Calcutta for three years and the petitioner has only submitted three years of transcripts for that university, with the 1980 transcript reflecting "Part I" of the three part examinations. Thus, the assertion in the Morningside evaluation that the beneficiary attended Calcutta University for four years is inconsistent with the beneficiary's transcripts.

Moreover, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after three years of higher education. A bachelor's degree in a professional field of study, such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary science, generally requires four years of education. See generally Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework - Degree Structure*, (as viewed on

November 25, 2005), available at <http://www.education.nic.in/htmlweb/higedu.htm> (printed copy incorporated into the record of proceeding). If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably be deemed to be the “foreign equivalent degree” to a United States baccalaureate degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah* 17 I&N Dec. at 245.

None of the evaluations suggest that the University of Calcutta credited the beneficiary with any coursework from Gauhati University. The University of Calcutta transcripts make no mention of transferred credits and, as stated above, list the beneficiary’s examination for 1980 as “Part I.” Thus, based on the reasoning in *Matter of Shah*, we reject any suggestion that the beneficiary’s three-year Bachelor of Science degree from the University of Calcutta is a “foreign equivalent degree” to a United States baccalaureate degree for purposes of this preference visa petition.

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor’s degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor’s degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because neither the Act nor its legislative history indicates that bachelor’s or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor’s degree.*

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. Although the preamble to the publication of the final rule specifically dismissed the option of equating “experience alone” to the required bachelor’s degree, the same reasoning applies to accepting an equivalence in the form of multiple lesser degrees, professional training, incomplete education without the award of a formal degree, or any other level of education deemed to be less than the “foreign equivalent degree” to a United States baccalaureate degree. Whether the equivalency of a bachelor’s degree is based on work experience alone or on a combination of multiple lesser degrees, the analysis results in the “equivalent” of a bachelor’s degree rather than a “foreign equivalent degree.” In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the “foreign equivalent degree” to a United States baccalaureate degree. As noted in the federal register, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to bachelor’s degree will qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. In addition, a combination of degrees which, when taken together, equals the same amount of

coursework required for a U.S. baccalaureate degree does not meet the regulatory requirement of a foreign equivalent degree.

Based on the submitted evidence, the petitioner has not established that the beneficiary possesses a United States Master's degree or a foreign equivalent degree. And as previously explained, the petitioner has not established that the beneficiary possesses the minimum alternate qualifications, a Bachelor of Science degree with five years of experience, as the beneficiary's three-year Bachelor of Science degree is not a "United States baccalaureate degree or a foreign equivalent degree." Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

For the above stated reasons, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.